



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

201123050

Uniform Issue List: 4980F.00-00

MAR 16 2011

LEGEND:

Company A:

Provider B:

Provider C:

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

Date 6:

Plan Year 1:

Year 2:

Amount 1:

X Days:

Y Days:

Z Days:

AA Days

Amount 5:

Plan X:

Plan Z:

Employee T:

Dear :

This is in response to the February 4, 2009, letter submitted on your behalf by your authorized representative, as supplemented by correspondence dated May 14, 2009, and September 25, 2009, in which you request a waiver of the excise tax under section 4980F(c)(4) of the Internal Revenue Code (the "Code") as it applies to Plan Z.

### FACTS

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Company A is a tax-exempt social service agency. The mission of Company A is to help individuals and families by offering assistance to them through an array of social, health, cultural, and educational programs.

Prior to Year 2, Company A maintained Plan X, a defined contribution money purchase pension plan intended to be qualified under section 401(a) of the Internal Revenue Code. Plan X was established approximately thirty years ago on Date 1. The terms of Plan X required Company A to make a fixed, non-discretionary annual contribution in the amount of Amount 1.

Prior to Year 2, Company A retained Provider B to administer Plan X. Company A changed service providers in Year 2 from Provider B to Provider C.

On Date 2, on the advice of Provider C, Company A converted Plan X to Plan Z, a defined contribution profit sharing plan that allowed for discretionary annual contributions to be made to the plan. Since Date 2 and until the date of this ruling request, there has been no reduction in the amount of the annual contributions and Company A has continued to make annual contributions to Plan Z in the amount of Amount 1.

On Date 3, Company A issued a notice to employees of Company A that was intended to comply with section 4980F(e) of the Internal Revenue Code ("204(h) notice"). This notice was required as a result of the conversion of Plan X to Plan Z.

The number of days between Date 2, the date of conversion of Plan X to Plan Z and Date 3, the date of the issuance of the section 204(h) notice, is X Days.

You, through your authorized representative, assert that the 204(h) notice was not timely sent because of your reliance upon Providers B and C, who are both

experienced service providers and who failed to advise you of the necessity for sending the 204(h) notice.

Employee T of Company A was responsible for monitoring the administration of Plan X leading up to the conversion. Employee T was responsible for working with Provider B and Provider C prior to, during, and after the conversion of Plan X to Plan Z. Neither Provider B nor Provider C counseled Employee T on the need to send a notice of conversion or 204(h) notice to the participants of Plan X at any time. On Date 4, Employee T first became aware of the Company's failure to send a 204(h) notice regarding the plan conversion while discussing an unrelated matter with outside counsel. The outside counsel is unaffiliated with either Provider B or Provider C. The number of days between Date 2, the date of conversion, and Date 4 is Y Days.

Employee T took no action to correct the failure to send the 204(h) notice nor did she make any other employee of Company A aware of the failure to provide the 204(h) notice. Employee T's employment with Company A terminated on Date 5. The number of days between the Date 4, the date Employee T first learned of the failure to send the 204(h) notice and Date 5, the date of her termination with Company A, is Z Days.

On Date 6, AA Days after Employee T had left Company A's employ, Employee T's replacement became aware of the need to send out a notice of conversion to the participants of Plan X. On Date 3, less than 30 days later, Company A sent out the notice of conversion.

You assert that imposing a tax on Company A under section 4980F of the Code would lead to a reduction of the programs and services provided by Company A and cause undue harm to the charitable recipients of the services and programs provided for by Company A.

You have documented the financial and operating status of Company A. Company A has operated at a net loss in recent history. Company A has recently reduced its programs and outreach due to Company A's distressed financial condition. You assert that the financial distress shared by the nation has had a similarly deleterious impact upon Company A's financial status.

### ISSUE

Based on the above, you, through your authorized representative, request the following letter ruling:

- (1) That the tax imposed under section 4980F of the Code be waived under the provisions of section 4980F(c)(4) of the Code with respect to Company A's failure to timely provide the section 204(h) notice with respect to its conversion of Plan X to Plan Z.

### LAW

Section 4980F of the Code was added by the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA "). Section 659(a)(1) of EGTRRA provides that section 4980F of the Code applies to plan amendments taking effect on or after June 7, 2001.

Section 4980F(a) of the Code imposes a tax on the failure of any applicable pension plan to meet the requirements of Section 4980F(e) with respect to any applicable individual.

Section 4980F(b)(1) of the Code states that the amount of the tax imposed by the failure to comply with subsection (a) shall be \$100 for each day of noncompliance.

Section 4980F(c)(1) of the Code provides that no tax shall be imposed by section 4980F(a) on any failure during any period for which it is established to the satisfaction of the Secretary that any person subject to liability for such tax did not know that the failure existed and exercised reasonable diligence to meet the requirements of section 4980F(e).

Section 4980F(c)(2) of the Code provides that no tax shall be imposed by section 4980F(a) on any failure if (A) any person subject to liability for the tax exercises reasonable diligence to meet the requirements of section 4980F(e), and (B) such person provides the notice described in Section 4980F(e) during the 30-day period beginning on the first day such person knew, or exercising reasonable diligence would have known, that such failure existed.

Section 4980F(c)(4) of the Code provides that in the case of a failure that is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by section 4980F(a) to the extent that the payment of such tax would be excessive or otherwise inequitable relative to the failure involved.

Section 4980F(e)(3) of the Code provides that the notice required in section 4980F(e)(1) shall be provided within a reasonable time before the effective date of the plan amendment.

Section 4980F(e)(1) provides that if an "applicable pension plan" is amended to provide for a significant reduction in the rate of future accrual, the plan administrator shall provide the notice described in paragraph (2) to each applicable individual.

Section 54.4980F-1, Question and Answer 8(b), of the Income Tax Regulations provides that an amendment converting a money purchase plan to a profit sharing plan is in all cases, deemed to be an amendment that provides for a significant reduction in the rate of future benefit accrual.

ANALYSIS

The Internal Revenue Code provides for a waiver of the tax imposed under Code section 4980F when the failure to send a notice is due to reasonable cause. In this instance, Company A was required by section 4980F(e)(1) to provide a section 204(h) notice upon the conversion of Plan X, a money purchase pension plan, to Plan Z, a profit sharing plan. Neither Provider B nor Provider C advised Company A of the necessity for such a notice. Thus, we believe that the notice was not timely provided due to the taxpayer's reasonable reliance upon experienced service providers and justifies a waiver of the excise penalty for the period when Company A was unaware of the need to send out the notice i.e., from the date of the conversion, Date 2 to Date 4, when Employee T was advised of the necessity for the 204(h) notice or Y Days.

However, on Date 4, Company A, through its Employee T, became aware of the need to provide the notice. Employee T failed to provide the 204(h) notice or advise any other employee of the necessity for the notice. Employee T terminated her employment on Date 5. The number of days during this period is Z Days. No reasonable cause exists for failure to provide the section 204(h) notice during the said Z Days period of time. Applying the \$100 per day tax causes Company A to owe a tax for this lapse in the amount of Amount 5.

Once the replacement for Employee T realized the need for the 204(h) notice, the notice was promptly provided to affected plan participants. Thus, we believe that from the date of Employee T's termination of employment with Company A on Date 5, through the date that the section 204(h) notice was sent to plan participants on Date 3, Company A again was not aware of the necessity for the 204(h) notice and, once aware, took timely and appropriate action to provide the section 204(h) notice within 30 days of Date 6. Thus, with respect to this period, good cause exists which justifies a waiver of the excise tax penalty for the period.

CONCLUSION

Thus, with respect to your ruling requests, we conclude as follows:

- (1) The tax imposed under section 4980F of the Code is waived under the provisions of section 4980F(c)(4) of the Code for the periods during which Company A was unaware of the necessity for making the election to the extent described above (i.e. from Date 2 to Date 4 and from Date 5 to Date 3.) However, the tax is not waived for the period beginning with Date 4 and ending with Date 5 or Z Days.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to the power of attorney on file with this office, you are receiving the original of this letter ruling and your representative is receiving a copy of the letter ruling.

If you wish to inquire about this ruling, please contact the undersigned at ( ) -  
. Please address all correspondence to SE:T:EP:RA:T3.

Sincerely,

, Acting Manager,  
Employee Plans Technical Group 3

Enclosures:

Deleted Copy of this Letter  
Notice of Intention to Disclose, Notice 437

cc: